

BOARD OF APPEALS CASE NO. 5182

*

BEFORE THE

APPLICANT: S & S Auto Properties, LLC

*

ZONING HEARING EXAMINER

**REQUEST: Variance to disturb the forested
non-tidal wetlands in the B3/CI District;
1800 Belair Road, Fallston**

*

OF HARFORD COUNTY

*

Hearing Advertised

*

Aegis: 11/28/01 & 12/51/01

HEARING DATE: January 14, 2002

Record: 11/30/01 & 12/7/01

*

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicant, S & S Auto Properties LLC, is seeking a variance, pursuant to Harford County Code Section 267-41D(5)(e) and (6), to disturb the forested non-tidal wetland areas in a B3/CI District.

The subject parcel is located at 1800 Bel Air Road, Fallston, Maryland and is more particularly identified on Tax Map 55, Grid 2D, Parcel 137. The parcel consists of 9.93 acres and is zoned B3/CI (General Business/Commercial Industrial).

For the Applicant appeared Mr. Benjamin F. Brockway, who qualified as an environmental planner. Mr. Brockway, using Applicant's Exhibit I, described the parcel, the surrounding area and uses, the Applicant's proposed use and the location of wetland areas on the property. The parcel is located on the northwest side of Bel Air Road between Mountain Road and Connolly Road. The Applicant proposes to complete the second phase of construction of an integrated auto sales and service dealership. Existing is the Dodge and Honda dealership and proposed is the final phase of the project, a Mitsubishi dealership. The witness pointed out the presence of an existing wetland on the parcel. The existing wetland is surrounded by commercial development (see Applicant's Exhibit 5, center of photo) and was described by the witness as being of poor quality with limited habitat for wildlife, no recreational hunting or fishing available and minimal water quality improvement. At the present time, this small wetland area is handling 18 acres of drainage, 8 acres offsite. The Applicant's use is oriented to the perimeter of the wetland and will disturb only 0.78 acres of this sensitive environmental feature, preserving approximately two-thirds of the existing wetland.

Case No. 5182– S & S Auto Properties LLC

The witness described two underground water treatment facilities located on the parcel which will remove 98% of the suspended solids in runoff from 18 acres vastly improving the quality of water being returned to the waters of the State. The remainder of the wetland area that is undisturbed, about 1.5 acres, will be placed in a conservation easement to further protect it from any future encroachments. Quoting the witness's un rebutted report, he states:

“Impacts to wetlands associated with these construction activities have been avoided and/or minimized to the greatest extent possible. This has been achieved by concentrating site improvements within the existing upland area along Bel Air Road and limiting wetland impact to an area adjacent to Phase I site improvements. By allowing preservation of the majority of wetlands located to the rear of the proposed building, the site design avoids the impact of the highest quality wetlands located on-site and the intermittent drainageways, therefore maintaining the functional benefits they provide.”

Mr. Brockway also described a mitigation area that will provide better than a 2:1 creation of a new wetland area. The area is located in the Deer Creek watershed near the Scarborough landfill. It is an area that the Maryland Department of the Environment has suggested because of its proximity to large tracts of forested area near Deer Creek which has experienced a net loss of wetlands over the years. The wetland area will be revegetated with appropriate wetland vegetation and soils in accordance with generally accepted standards of the federal and State agencies charged with oversight of wetland construction. The witness pointed out that the project design employed the consultative services of the Army Corps of Engineers and that the proposal had received approval of the Maryland Department of the Environment and the Harford County Soil Conservation District. According to the Applicant's witness, the overall water quality will be greatly improved as a result of this project. Moreover, the amount of wetlands in Harford County will more than double as a result of the creation of a new wetland mitigation area at the proposed Deer Creek site. No adverse impacts will result from the project as planned to water quality, Winters Run watershed or surrounding properties.

Case No. 5182– S & S Auto Properties LLC

Mr. Anthony McClune appeared and testified on behalf of the Harford County Department of Planning and Zoning. Mr. McClune testified that the Department supported the Applicant's request finding that the project as proposed could be developed in a manner that did not result in adverse impacts to the natural Resources District of Harford County and could be developed in a manner that would serve to improve overall water quality in Harford County. The parcel is located close to Winters Run and surface waters will discharge into that waterway. Because of development along this corridor, the wetlands have been fragmented and surface runoff is generally uncontrolled. What the Applicant proposes is to treat the surface runoff of more than twice the area of its entire parcel, 18 acres. This will treat the runoff from impervious surfaces located not only on the Applicant's parcel but on other off site areas including the roadbed of Bel Air Road. The Applicant proposes state of the art water treatment facilities which will remove 98% of solid contaminants. Additionally the Applicant proposes creation of 2.03 acres of new wetland as a mitigation area along Deer Creek. In recommending approval, the Department of Planning and Zoning also recommended imposition of seven (7) conditions of approval.

A number of persons appeared in opposition to this request. Mr. Jeffrey Conti appeared and expressed his general dissatisfaction with the continued destruction of wetlands. He described his fear that the project as proposed would decrease the quality of water discharging into Winters Run which would be an adverse impact to his property which is downstream of the project on Winters Run. Mr. Conti attempted to show that the project did not meet the standards for a variance set forth in Code Section 267-11 and expressed no knowledge of the variance provisions of the Code that apply to this request which are set forth at Code Section 267-41D(6).

Mr. Elwin Penski appeared in opposition to the subject request. The witness was also concerned about the destruction and loss of wetlands and the resulting adverse impact to the Chesapeake Bay. His concern is that continued loss of wetlands will do more damage to the bay and he opposes any such further development that would have such consequence.

CONCLUSION:

The Applicant, S & S Auto Properties LLC, is seeking a variance, pursuant to Harford County Code Section 267-41D(5)(e) and (6), to disturb the forested non-tidal wetland areas in a B3/CI District.

Harford County Code Section 267-41D(5)(e) and (6) provide as follows:

D. Natural Resources District.

- (5) Conservation requirements.** The following conservation measures are required within this district.
 - (e) Nontidal wetlands shall not be disturbed by development.** A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.
- (6) Variances.** The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.

The Hearing Examiner shares the concerns of those citizens that testified in opposition to development that results in decreased water quality, destruction of wetlands and adverse impact to the Chesapeake Bay. Fortunately, the Harford County Zoning Code also recognizes the dangers that can result from the uncontrolled destruction of wetland areas and provides guidance on balancing the rights of a property owner to make lawful use of his property with the interests of the rest of the public and the environment.

Destruction of wetlands by development is prohibited in Harford County unless such destruction can be done in a manner that demonstrates that the proposed development will not adversely affect the Natural Resources District. That District is not only sensitive areas located on a particular parcel but encompasses sensitive areas located off site of the particular parcel. In this case an existing wetland of very poor quality is intended to be partially disturbed. About one-third of this area will be disturbed by the proposed development leaving the highest quality of the wetland area undisturbed and preserved.

Case No. 5182– S & S Auto Properties LLC

The Hearing Examiner finds that the overall quality of water discharged into the waters of the state will be improved and not diminished by the Applicant's request. State of the art water treatment facilities planned by the Applicant will serve to significantly improve the quality of water discharged into the environment not only from the Applicant's property but from 9 acres of other property located off site. It is of significance that the surface run-off from a portion of Bet Air Road, now uncontrolled, will be subject to treatment through the Applicant's facility representing material improvement to the quality of this discharge. Additionally, the Applicant intends to create new wetland of over 2 acres. This mitigation area will be constructed within the Deer Creek watershed near the Scarborough landfill and represents a significant improvement to the quality and quantity of wetlands in Harford County and the State of Maryland. The Maryland Department of the Environment is prepared to grant full approval to the Applicant's proposal and the Harford County Soil Conservation District has offered no opposition to the request.

The Hearing Examiner finds that the Applicant's proposal will not adversely affect the Natural Resources District and recommends approval of the request, subject to the following conditions:

1. No additional disturbance be permitted to the wetlands and their associated buffer beyond the limits of disturbance shown on Attachment No. 3.
2. The Applicant shall record a revised final plat for the site delineating the reduced NRD area and limit of disturbance.
3. The Applicant shall submit the plan for the third dealership for review and approval through the Development Advisory Committee.
4. The Applicant shall obtain all necessary permits and inspections for the construction of the third dealership.
5. The Applicant shall submit a final wetland mitigation plan to the Department of Planning and Zoning for review and approval for the off-site mitigation. This plan shall include the species of vegetation to be planted in the mitigation area.

Case No. 5182– S & S Auto Properties LLC

6. The Applicant shall record easements for the off-site mitigation area and the remaining on-site wetlands area in the Harford County Land Records, along with deeds of covenants and restrictions for the areas.
7. The Applicant shall post a bond with the County for the estimated cost of the installation and maintenance requirements for the mitigation plantings.

Date FEBRUARY 5, 2002

**William F. Casey
Zoning Hearing Examiner**